

REMARKS

The last Office Action has been carefully considered.

It is noted that claims 17-28 and 36-38 are rejected over the patent document to Amitai.

Also, claims 24 and 28 are rejected under 35 U.S.C. 112.

In view of the Examiner's formal rejection of the claims, claim 24 has been canceled and claim 28 has been amended in compliance with the Examiner's requirements. It is believed that the formal rejections to the claims should be considered as no longer tenable and should be withdrawn.

It is respectfully submitted that the new features of the present invention which are defined in the claims currently on file, and in particular in the independent claims 17, 23 and 36 are not disclosed in the references.

Turning now to the references, and in particular to the patent document to Amitai, it can be seen that this reference deals with homeopathic formulations. In the reference a slow or controlled release particulate solid

formulation for use in homeopathic medicine is proposed as well as a method of producing the same.

Thus, the reference deals exclusively with a medication which includes exclusively a homeopathic product. In contrast, in accordance with the applicant's invention as defined in the above mentioned claims, the medication includes a potentiated medicinal substance produced by a homeopathic method as in the reference, and in addition, in contrast to the reference, it also includes an active medicinal substance in a therapeutic dose. The reference, in its medicine, does not have an active medicinal substance in a therapeutic dose produced from the same initial material as a potentiated medicinal substance produced by a homeopathic method (wherein both substances are produced from the same initial material). In the reference the potentiated medicinal substance produced by a homeopathic method is introduced into an inert carrier so that the medicine is easy to use. It is important to emphasize that in the reference the carrier is formed by sugar, complicated ethers, etc., but definitely not by an active medicinal substance in therapeutic dose produced from the same initial material as the potentiated medicinal substance produced by a homeopathic method.

It is therefore believed to be clear that the new features of the present invention which are now defined in these claims are also not disclosed in the reference.

The Examiner rejected the original claims as being anticipated by the reference. In connection with this, it is believed to be advisable to cite the decision in *re Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) in which it was stated:

“Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.”

Definitely, the reference does not disclose each and every element of the present invention as defined in the above listed claims. Therefore, it is believed that the anticipation rejection should be considered as not tenable and should be withdrawn.

It is respectfully submitted that the present invention as defined in the above mentioned claims also can not be considered as obvious from the reference. In order to arrive at the applicant's invention, the solution proposed in the reference has to be fundamentally modified by introducing into it the features which were first proposed by the applicant. However, it is known that

in order to arrive at a claimed invention, by modifying the references the cited art must itself contain a suggestion for such a modification.

This principle has also been consistently upheld by the U.S. Court of Customs and Patent Appeals which, for example, held in its decision in re Randol and Redford (165 USPQ 586) that

Prior patents are references only for what they clearly disclose or suggest; it is not a proper use of a patent as a reference to modify its structure to one which prior art references do not suggest.

Definitely, the reference does not contain any hint or suggestion for such features.


In view of the above presented remarks and amendments, it is believed that the above mentioned independent claims should be considered as patentably distinguishing over the art and should be allowed.

As for the dependent claims, these claims depend on the independent claims, they share its presumably allowable features, and therefore it is respectfully submitted that they should be allowed as well.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-243-3818).

Respectfully submitted,



Ilya Zborovsky
Agent for Applicant
Reg. No. 28563